Supreme Court, U.S.
FILED
SEP 24 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-255

In the Supreme Court of the United States

OCTOBER TERM, 1987

MAGD E. ZOHDI, QUALITY CONTRACTING AND SERVICES INC., ET AL., PETITIONERS
v.
THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER OF SUN BELT FEDERAL BANK, F.S.B., RESPONDENT

PETITIONERS' SUPPLEMENTAL BRIEF

ROBERT V. MCANELLY
5757 Corporate Blvd., Suite 101
Baton Rouge, Louisiana 70808
(504) 926-0430
Counsel of Record

PAUL R. BAIER
Paul M. Hebert Law Center
Louisiana State University
Baton Rouge, Louisiana 70803
Counsel for Petitioners

October 23, 1987

Franklin Press, Inc. Baton Rouge, La.

INDEX

PAGE

PROCEEDINGS BELOW 1
ARGUMENT 4
CONCLUSION 5

TABLE OF AUTHORITIES

CASES: *Page*

North Mississippi Savings & Loan v. Hudspeth, 756 F. 2d 1096 (5th Cir. 1985) 4
Thibaut v. Ourso, 605 F. Supp. 1 (M.D. La. 1981) 2
Thibaut v. Ourso, 705 F.2d 118 (5th Cir. 1983) 5

In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-255

MAGD E. ZOHDI, QUALITY CONTRACTING AND SERVICES INC., ET AL., PETITIONERS

v.

THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER OF SUN BELT FEDERAL BANK, F.S.B., RESPONDENT

In order to clarify the Petitioner's standing to file the instant petition for writ of certiorari, this Supplemental Brief is filed pursuant to Supreme Court Rule 22.6.

PROCEEDINGS BELOW

The original lawsuit precipitating this action was a federal court R.I.C.O. action filed by Sun Belt Federal Bank against the owners of the property (Bonfanti, Fackrell, etc.), the general contractor, the architect, etc.

As there were hundreds of material and labor liens filed on the property, several pending bankruptcy proceedings involving the same defendants and the petitioners in this writ application, and other legal actions pending, a settlement conference was held before Judge Polozola in an attempt to resolve all matters before his court.

At this conference the various lien holders agreed to cancel their liens in exchange for certain guarantees by Sun Belt. In addition, some of the bankruptcy matters were to be dismissed. When Sun Belt failed and FSLIC was appointed receiver, the various lien holders filed a motion (and subsequent amended motion) in the District Court seeking an order requiring FSLIC to honor the settlement judgment.

Following the December 23, 1985 settlement conference, the petitioners in this writ application became parties to that action:

> "The Court will approve the settlement as submitted by the parties. And the Court will enter a sixty day dismissal insofar as the federal suit is concerned, just to give me some leeway to work with the parties.
>
> "This settlement is a federal Court order. Under the provisions of *Thibaut versus Ourso*, it will be enforced as written, and also supplemented here in open court today. And I will enforce it." (Transcript p. 62-63)

By filing the above mentioned motion and amended motion, the petitioners became parties and submitted themselves to the jurisdiction of the court. At the December 19, 1986 hearing held on petitioners' motion, Judge Polozola warned the petitioners of the consequences of their motion:

> "I just want to say one thing, so there won't be any question about how I feel about this: should I enforce the settlement, which is probable, I expect those parties who will take over this job to carry out my judgment. And if they don't carry out my judgment, then we will have a hearing to determine whether or not they should be held in criminal contempt of court.

> "And keep in mind, as I told everybody during the conference we have had in this case, that should I find someone in criminal contempt of the court, then the restitution would be required under the victim and witness protection act; and the restitution would be the judgment itself, so that no one could go into bankruptcy and eliminate the judgment.
>
> "In other words I am not going to buy another Bankruptcy." (Transcript p. 3)

The persons he was referring to as "those who will take over this job" were Magd E. Zohdi and the Quality-Standard Joint Venture.

The District Court then made its judgment binding upon all *parties* to the proceedings:

> "The Court finds that the parties did in fact enter into an agreement in this case, the settlement compromise agreement, the terms of which have either been dictated into the record at various times, or have been reduced to writing and filed in the record under the various exhibits that are in the record.
>
> "The court adopts as part of its opinion the settlement agreement that was entered into by the parties which was dictated into the record, as well as the written and signed versions of it which have been filed into the record." (Transcript p. 52)

A copy of the settlement agreement was made a part of the Court's December 19, 1986 Judgment (See Appendix "B" to the Petition for Certiorari).

ARGUMENT

While the Petitioners in this writ application, (Magd E. Zohdi, Quality Contracting and Services, Inc., C.B.S., Inc. and Quality-Standard Joint Venture) never filed a formal motion of intervention, they have been parties de facto since submitting themselves as parties and having their attorney enroll as counsel of record on December 23, 1985 and on various occasions since. To require the filing of such a motion would be a needlessly technical interpretation of Rule 21 of the Federal Rules of Civil Procedure.

A similar question concerning procedural capacity arose in *North Mississippi Savings & Loan v. Hudspeth* 756 F 2d 1096 (5th Cir. 1985). An objection was raised contending that FSLIC was not properly a party to the action as they had never been formally joined. The Fifth Circuit found that although FSLIC was never formally joined, it was a party nevertheless, as requiring formal intervention under the circumstances would render federal pleadings excessively technical in contradiction of Federal rules of Civil Procedure 8(e)(1) and 8(F).

CONCLUSION

As your petitioners became parties in this action on December 23, 1985 by voluntarily submitting themselves to the jurisdiction of the Federal District Court, and subsequently filed formal motions therein, they are now parties with standing to file this petition. Judge Polozola had the authority and jurisdiction to join them as parties under *Thibaut v. Ourso* 605 F. Supp. 1, 3 (1981) and *705 F. 2d 118* (5th Cir., 1981): "A valid compromise binds those who are parties thereto and those with notice who claim under them."

Respectfully submitted,

ROBERT V. MCANELLY
5757 Corporate Blvd., Suite 101
Baton Rouge, Louisiana 70808
(504) 926-0430
Counsel of Record

PAUL R. BAIER
Paul M. Hebert Law Center
Louisiana State University
Baton Rouge, Louisiana 70803
Counsel for Petitioners

October 23, 1987